

1 DAVIS WRIGHT TREMAINE LLP
2 Jacob M. Harper (SBN 259463)
 jharper@dwt.com
3 Nicole S. Phillis (SBN 291266)
 nicolephillis@dwt.com
4 Heather F. Canner (SBN 292837)
 heathercanner@dwt.com
5 865 South Figueroa Street, Suite 2400
6 Los Angeles, California 90017-2566
7 Telephone: (213) 633-6800
8 Facsimile: (213) 633-6899

9 *Attorneys for Defendant*
10 *The Kroger Company*

11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**
13

14 SHAVONDA HAWKINS, on behalf of
herself and all others similarly situated,

15 Plaintiff,

16 vs.

17 THE KROGER COMPANY,

18 Defendant.
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Case No. 3:15-cv-2320-JM-AHG
Hon. Jeffrey T. Miller

**DEFENDANT'S NOTICE OF
MOTION AND MOTION TO
EXCLUDE EXPERT TESTIMONY
OF ROBERT M. BOWEN**

[DEF.'S MOTION 3 OF 3]

***[Memorandum; Omnibus Declaration
of Jacob M. Harper; Proposed Order
Filed Concurrently]***

Date: June 15, 2020
Time: No argument unless
requested by Court
Courtroom: 5D

Action Filed: October 15, 2015

NOTICE OF MOTION AND MOTION

TO ALL PARTIES, THE COURT, AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on June 15, 2020, at 10:00 a.m., or as soon thereafter may be heard, in the United States District Court for the Southern District of California, Edward J. Schwartz Courthouse, located at Courtroom 5D, Suite 5190, 221 West Broadway, San Diego, California 92101, before the Honorable Jeffrey T. Miller, Defendant The Kroger Company (“Kroger”) will and hereby does move this Court for an order excluding the expert opinion of Robert M. Bowen, including but not limited to Dr. Bowen’s expert report and his testimony. **Pursuant to the direction of this Court, Kroger’s Motion to Exclude the Opinion of Robert M. Bowen is made with the understanding that no argument shall be heard unless requested by the Court.**

Kroger moves to exclude the opinion of Dr. Bowen, including his expert report and expert testimony, on the grounds that it does not satisfy the standards set forth under Rule 702, 703 and 402, and should be excluded pursuant to *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and its progeny. Specifically, Kroger moves to exclude Dr. Bowen’s opinion and testimony on the following grounds:

1. **Unreliable Methodology**: Dr. Bowen’s “Full Restitution” damages methodology is unreliable and is inconsistent with the evidence and Plaintiff’s theory of liability as required in *Comcast Corp. v. Behrend*, 133 S. Ct. 1426, 1433 (2013) and its progeny;
2. **Unhelpful and Irrelevant Opinions**: Dr. Bowen’s opinions based on Kroger’s 2019 Form 10-K are irrelevant and unhelpful because they have nothing to do with pre-2015 restitution related to Kroger Bread Crumbs; and

1 3. **Lack of Qualifications**: Dr. Bowen is not qualified to opine on
2 damages because he has no experience with segregating damages from
3 retained value in food or consumable products class actions.

4 This Motion is based on this Notice of Motion and Motion; the
5 accompanying Memorandum of Points and Authorities; the Omnibus Declaration of
6 Jacob M. Harper and all evidence submitted therewith; the entire record of this
7 action before this Court; and on such other written and oral argument as may be
8 presented to the Court.

9
10 DATED: May 18, 2020

DAVIS WRIGHT TREMAINE LLP

By: /s/ Jacob M. Harper

Jacob M. Harper

*Attorneys for Defendant
The Kroger Company*

CERTIFICATE OF SERVICE

Shavonda Hawkins v. The Kroger Company

U.S.D.C. Southern District of California Case No. 3:15-cv-2320-JM-BLM

I the undersigned, declare:

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 865 S. Figueroa Street, Suite 2400, Los Angeles, CA 90017.

On May 18, 2020, I served true copies of the following documents described as:

**DEFENDANT'S NOTICE OF MOTION AND MOTION TO EXCLUDE
EXPERT TESTIMONY OF ROBERT M. BOWEN**

on the interested parties in this action as follows:

BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the documents with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on May 18, 2020, at Los Angeles, California.

/s/ Jacob M. Harper

Jacob M. Harper